BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations	)	MB Docket No. 14-57
	)	

PETITION TO DENY OF FRONTIER COMMUNICATIONS

Frontier Communications Corporation ("Frontier") hereby respectfully submits its petition to deny the applications of Comcast Corporation ("Comcast"), Time Warner Cable Inc. ("TWC"), Charter Communications, Inc. ("Charter"), and SpinCo to assign and transfer control of licenses and other authorizations[1] in accordance with the Federal Communications Commission's ("FCC" or "Commission") July 10, 2014 Public Notice seeking comment on the proposed transaction.[2]

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[1] *In the Matter of Applications of Comcast Corporation and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, Applications and Public Interest Statement, MB Docket No. 14-57 (filed Apr. 8, 2014) ("*Application for Review*"); Public Interest Statement of SpinCo, Charter Communications, Inc., and Comcast Corporation, Spin Transaction, MB Docket No. 14-57 (filed June 4, 2014); Public Interest Statement of Charter Communications, Inc. and Comcast Corporation, Comcast-to-Charter Exchange and Sale Transactions, MB Docket No. 14-57 (filed June 4, 2014); Public Interest Statement of Comcast Corporation and Charter Communications, Inc., Charter-to-Comcast Exchange and Sale Transactions, MB Docket No. 14-57 (filed June 4, 2014).

[2] *In the Matter of Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, MB Docket No. 14-57, DA 14-986 (rel. July 10, 2014) ("Public Notice").

I. INTRODUCTION AND SUMMARY

Frontier is the leading provider of wireline telecommunications services focusing on rural America. Our operations in 27 states offer services and products to more than three million customers. Frontier is relentlessly deploying broadband to the communities we serve, to mid-sized cities and towns, and to rural areas others consider too difficult to serve. Frontier currently has 1.93 million broadband subscribers and competes vigorously with both Comcast and TWC in multiple markets around the nation.[3] As we continue to invest in broadband deployment, we recognize that our customers desire a seamless "triple-play" bundle of voice, data and video products. At this time, Frontier offers video services directly on a relatively small scale in the Fort Wayne, Portland and Seattle areas via FiOS video service acquired from Verizon in 2010. Frontier currently has 393,000 video subscribers[4] and we continue to explore options for expanding our video offerings throughout our service area. Frontier is in the process of acquiring AT&T's wireline assets in the state of Connecticut; if approved Frontier would add approximately 180,000 additional video subscribers (currently on AT&T's "U-Verse" platform) to its subscriber base, for a total of 573,000 video subscribers.[5]

Frontier does not routinely oppose mergers and acquisitions in the telecom market. In this instance, however, Comcast's appetite for market control threatens the competitiveness of the video market. Comcast is already the largest internet provider and largest video provider in the

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[3] Frontier Communications Corp., Quarterly Report (Form 10-Q), at 32 (Aug. 7, 2014).

[4] *Id.*

[5] *See in re: Applications Filed by Frontier Communications Corp. and AT&T, Inc., for the Assignment of Transfer of Control of the Southern New England Telephone Co. & SNET America, Inc.*, Memorandum Opinion and Order, WC Dkt. No. 14-22, DA 14-1065 (rel. Jul. 25, 2014) (approving Frontier's acquisition of AT&T's wireline assets in Connecticut. Frontier's application before the State of Connecticut Public Utilities Regulatory Authority remains pending.).

United States. If approved, Comcast's video subscriber base would be approximately 52-times the size of Frontier's video subscriber base.[6] Small multichannel video programming distributors (MVPDs) like Frontier cannot achieve the scale necessary to drive down programming costs, which are based upon an MVPD's subscriber totals, to the same levels that Comcast can with this transaction. Further, Comcast would own an enormous share of the "must have" programming that customers demand and could exercise its market dominance to either outright deny such programming to its competitors or to functionally deny the programming by charging exorbitant rates for content.

In addition, approval of the transaction would give Comcast a broadband subscriber base that is 17 times the size of Frontier's.[7] Even as a local telephone provider, Comcast would have more than five times as many voice customers than Frontier has total customers for all services.[8] Comcast would have the incentive and means throughout its vertical and horizontal integration to create an over-the-top video platform that would give it a broadband marketplace advantage over all competitors. Meanwhile, Frontier remains saddled with legacy regulatory constructs that do not apply to Comcast. The additional market dominance that Comcast would gain if this transaction were approved would give Comcast an advantage in size and scope that cannot be

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[6] Comcast would have approximately 30 million video subscribers after completing the acquisition of TWC and divesting 3.9 million subscribers to Charter Communications. Press Release, Comcast, Comcast and Charter Reach Agreement on Divestitures (Apr. 28, 2014), *available at* http://corporate.comcast.com/news-information/news-feed/comcast-and-charter-reach-agreement-on-divestitures.

[7] *Compare* Comcast Corp., Quarterly Report (Form 10-Q), at 33 (Jul. 24, 2014) (21.2M broadband subscribers) and Time Warner Cable, Inc., Quarterly Report (Form 10-Q), at 12 (Jul. 31, 2014) (11.4M broadband subscribers) *with* Frontier 10-Q, *supra* n.3, at 32 (1.9M subscribers).

[8] Comcast 10-Q, *supra* n.7 at 33 Comcast (11M customers); TWC 10-Q, *supra* n.7 at 12 (4.9M customers). Frontier no longer reports access line counts.

replicated and would ultimately reduce consumer choice. The Commission should deny the proposed merger.

II. THE SIZE AND SCOPE OF THE COMBINED ENTITY WOULD HARM COMPETITION IN THE MVPD MARKET

While Frontier continues to grow its subscriber base organically by delivering a quality product in its markets and also by acquiring AT&T's wireline assets in Connecticut, the cost of content for video programming remains staggering for new entrants that lack the scale and scope of cable companies like Comcast and Time Warner Cable individually, let alone that of the merged entity. It is no mere coincidence that AT&T announced its proposed acquisition of DirecTV shortly after Comcast announced its intention to purchase Time Warner Cable. AT&T recognized the need to improve its subscriber scale in order to compete with Comcast on video programming pricing. As AT&T accurately described:

> Content is the most critical – and largest – variable cost for MVPDs. Per-subscriber content costs continue their long upward climb. In recent years, they have regularly outpaced inflation. With the most popular content increasingly concentrated in the hands of a few companies (including those affiliated with some of the largest MVPDs), those suppliers have the leverage to demand higher and higher fees with each passing year. Distributors must accede to these demands or risk losing customers, credibility, and competitive position. These rapidly increasing content costs have a disproportionate effect on providers with smaller subscriber bases, including AT&T.[9]

AT&T states that its acquisition of DirecTV "will reduce AT&T's expected per-subscriber content costs as a standalone company by at least 20 percent. Cost savings of this magnitude will significantly enhance the combined company's competitiveness in video services and in bundled services that include video, and will benefit consumers."[10] This is for a company that, with 5.7 million U-Verse customers, already has a subscriber base 10-times the size of

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[9] AT&T Public Interest Statement, MB Dkt. No. 14-90, 34-35 (filed June 11, 2014)
[10] *Id.* at 36.

Frontier's. When a company with AT&T's size and scope believes it must increase its own size by 356 percent in order to effectively compete,[11] it does not bode well for meaningful video competition in the rest of the marketplace.

Comcast's proposed acquisition of Time Warner Cable has triggered a video subscriber "arms race" that will stymie video programming competition as new entrants will be unable to gain access to programming at equitable rates. The underlying programming costs remain one of the largest barriers to entry for new entrants; a fact that is exacerbated when Comcast and Time Warner Cable already have so much control over the "must have" programming. Comcast owns multiple national cable networks including Bravo, CNBC, E!, Golf Channel, MSNBC, NBC Sports Network, Oxygen, SyFy, and USA Network. In addition, Comcast owns or partially owns eleven regional sports networks ("RSNs") in major television markets such as Philadelphia, the San Francisco Bay area, New England, and the Pacific Northwest. It owns two broadcast networks, NBC and Telemundo, and 26 broadcast stations. Comcast also owns Universal Pictures, a movie studio that provides, acquires, markets, and distributes filmed entertainment worldwide.

TWC is itself a vertically-integrated cable company, controlling multiple RSNs in major markets in California (including the recently-launched SportsNet LA), Hawaii, Kansas, Missouri, Nebraska, New York, Ohio, Texas, and Wisconsin. TWC also manages 26 local news channels, 16 local sports channels, and 10 "lifestyle" channels. If Comcast is allowed to buy TWC, Comcast would acquire national programming services such as iN Demand and MLB Network, as well. The addition of these new programming assets to Comcast's already robust portfolio of

[11] AT&T's acquisition of DirecTV would add 20.3 million subscribers, bringing its total to approximately 26 million.

video programming will only increase Comcast's incentive to withhold or drive up the price of such programming for other MVPDs.

This is not Comcast's first "transaction [that] would effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers."[12] In the Comcast/NBCU transaction just three years ago the Commission recognized that "[t]he harms that could result" from such a transaction, "are substantial."[13] In the Comcast/NBCU context the Commission stated that the transaction created "the possibility that Comcast-NBCU, either temporarily or permanently, will block Comcast's video distribution rivals from access to the video programming content the [joint venture] would come to control or raise programming costs to its video distribution rivals. These exclusionary strategies could raise distribution competitors' costs or diminish the quality of the content available to them."[14] Accordingly, the Commission implemented conditions necessary to help alleviate potential harms to consumers.

Now, Comcast has returned with another transaction even further concentrating control over its rivals' video programming. In this case however, Comcast advises that there are no potential harms for the Commission to address. Comcast asserts in its application that "[t]he acquisition of TWC's small amount of programming and the acquisition of approximately eight million more subscribers is simply not sufficient to require reopening of that analysis, or to garner renewed or greater concern, especially in the absence of any issues under the existing

[12] *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, ¶ 3 (2011) ("*Comcast/NBCU Order*")

[13] *Id.*

[14] *Id.* at ¶ 29.

conditions. . . ."[15] Comcast's assertion should be rejected; the Commission cannot blindly ignore the analysis of the harm to its MVPD competitors. Just because an MVPD competitor did not raise an anticompetitive complaint over the last three years (with strong conditions in place to prevent such occurrences) does not mean that future harms could not arise out of the current transaction. Prior to the Comcast/NBCU merger, Comcast had a demonstrated history of withholding programming from its rivals. For example, it refused to provide RSN content in Philadelphia to DirecTV and Dish.[16] Comcast's decision to withhold the Philadelphia RSN from competing MVPDs was not due to a dispute about prices or terms, but rather was Comcast's long-standing business policy.[17] Now, with Comcast acquiring more programming, including RSNs in major markets, the Commission cannot trust that Comcast will not revert to its prior practices that harm the competitive MVPD markets by withholding programming or charging exorbitant rates.

Beyond the harms that Comcast can individually exert on its MVPD competitors, the sheer size of a combined Comcast-TWC entity would be harmful to competition. Programming costs decrease with increased scale. Though Comcast plans to divest enough subscribers to remain below 30 percent of the residential video market, it would still dwarf its nearest competitor. Even if AT&T's purchase of DirecTV is approved, the combined Comcast entity would still be 15 percent larger than AT&T. While Frontier has no visibility into Comcast's negotiations, a company with the scale and market power of a Comcast/TWC combination will certainly see scale-based cost savings, but those savings will come at the expense of all smaller

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[15] *Application for Review* at 165.

[16] *Comcast/NBCU Order* at ¶ 67.

[17] *Id*. at ¶ 71.

competitors and their customers.[18] The short term result is that the success of a low-margin competitive entrants will be thwarted; the long term result will be limited consumer choice. Additionally, Charter, another Frontier competitor, would grow its base through the Comcast divestiture by nearly 30 percent to 5.5 million subscribers, which will give Charter an advantage in programming costs compared to its competitors. The potential harms of this deal are deep and far-reaching.

III. THE COMBINED ENTITY WOULD HAVE SIGNIFICANT ABILITY TO USE ONLINE VIDEO DISTRIBUTION TO HARM BROADBAND COMPETITION

Similarly, Comcast can exert its dominance in online video distribution or distributors, ("OVDs") to increase its broadband share vis a vis its competitors. In the Comcast/NBCU Transaction the Commission found that "Comcast-NBCU will have the incentive and ability to discriminate against, thwart the development of, or otherwise take anticompetitive actions against OVDs."[19] In the three years since the Commission's NBCU Order the demand for online content has skyrocketed. According to a recent Experion Marketing Services report, "the number of cord-cutters, which Experian considers people with high-speed Internet who've either never subscribed to or stopped subscribing to cable or satellite, has risen from 5.1 million homes to 7.6 million homes, or 44 percent, in just three years."[20] With this change in consumer demand, Comcast has an incentive to create exclusivity in its online content by limiting programming access to its own broadband subscribers. Thus the risks to competition resulting from this

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[18] *See supra* at 4-5 (AT&T noting that its DirecTV transaction will save it 20 percent in programming costs).

[19] *Comcast/NBCU Order* at ¶ 78.

[20] Timothy Stenovec, *Yes, Netflix and Hulu Are Starting to Kill Cable*, HUFFINGTON POST, *available at* http://www.huffingtonpost.com/2014/04/17/netflix-cable_n_5168725.html (last visited Aug. 22, 2014).

transaction become more acute because Comcast will control even more “must have” programming that it can use as a competitive advantage for its broadband network. In this situation, Comcast would bolster its broadband position to give it a competitive advantage across its entire footprint, not just where a competitive MVPD provides service.

Yet despite the increased importance of OVD, Comcast also claims that there is no need for Commission oversight on this issue. If the Commission does nothing then Comcast will use its programming advantage to drive broadband subscribership. For years Frontier has focused its efforts on deploying broadband to rural America, often establishing service in very remote areas where cable providers historically have been slow to deploy or will not go at all. Frontier has made these investments in our rural network at a time when its ILEC business remains heavily regulated, putting Frontier at a disadvantage against competitors like Comcast that generally have only deployed to densely-populated areas. The Commission cannot allow Comcast to further that competitive advantage by permitting this behemoth of a company to withhold OVD rights.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the proposed Comcast/TWC/Charter transaction as harmful to competition and the public interest.

Respectfully submitted,

By: /s/ Michael Saperstein

Mike Saperstein
Vice President, Federal Regulatory
Frontier Communications
2300 N St. NW, Suite 710
Washington, DC 20037

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